

REMARKS

In the Office Action mailed November 30, 2007, the Examiner rejected claims 1-7 and 9-21 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0173866 to Dangberg et al. in view of U.S. Patent No. 7,280,296 to Shirato and rejected claim 8 under 35 U.S.C. 103(a) as being unpatentable over Dangberg et al. and Shirato in view of U.S. Patent Publication No. 2003/0035072 to Hagg.

In response, Applicant has amended claims 1, 11-13, 15 and 17-21 and cancelled claim 10. No new matter has been added.

With respect to independent claims 1 and 11, Applicant has amended those claims to further define the recording trigger to be audible. That is, the recording trigger is something the person would hear if listening to that radio broadcast. Neither Dangberg et al. nor Shirato teach or suggest this limitation. Instead, Shirato describes a label message (LM) being broadcast in the header data associated with a song broadcast via a satellite system. This label message is not audible in that it is not heard by the listener of Shirato. Since Shirato does not teach or suggest an audible recording trigger, it follows that the combination of Dangberg et al. and Shirato cannot render claims 1 and 11 unpatentable.

With respect to claim 9, Applicant asserts that the Examiner is misreading it. Independent claim 1, from which claim 9 depends, recites an “audio tuner.” Thus, it is the “audio tuner” in claim 1, and not the “selection recognition engine,” that tunes to the proper frequency to receive a radio broadcast.

Instead, what is being claimed in claim 9 is described in paragraph [0014] of the present application wherein a particular audio sound broadcast within a particular radio signal is detected. For example, the audio tuner may tune to the 91.5 MHz frequency to

receive the radio broadcast signals. Part of that radio broadcast signal may be an embedded tone of 800 Hz that is monitored for by the selection recognition engine.

In response to this argument, the Examiner has asserted that a controller that knows what frequency a tuner is tuned to is equivalent to what is claimed in claim 9. This argument is incorrect. If the controller in Dangberg et al. instructs the tuner to tune to frequency X, the controller has prior knowledge of what frequency to tune to. Thus, the controller is not detecting a frequency, but rather dictating to which frequency a tuner should tune.

With respect to claims 17-19, the Examiner asserts that Dangberg et al. teach notifying the user and cites to paragraphs [0008]-[0010] and [0020]. Applicant has reviewed these paragraphs and cannot find any recitation of a notification system or method therein. To the contrary, Dangberg et al. do not teach a notification system or method in those cited paragraphs. Since Dangberg et al. do not teach this feature in paragraphs [0008]-[0010] and [0020], it follows that the rejection of claims 17-19 is improper.

In response to this argument, the Examiner asserts that an indicator indicating a broadcast portion has been recorded is an inherent characteristic of an MP3 player. The Examiner has changed his argument. First, the Examiner does not show where Dangberg et al. teach this feature. Instead, the Examiner asserts that this feature is inherent on typical MP3 players. Applicant fails to understand what the correlation is between a typical MP3 player and Dangberg et al.

In addition, Applicant respectfully requests that the Examiner provide a reference of a typical MP3 player showing this feature.

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Claims not specifically mentioned above are allowable due to their dependence on an allowed claim.

CONCLUSION

No additional fees are due. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant respectfully requests reconsideration of the present application, withdrawal of the rejections made in the last Office Action and the issuance of a Notice of Allowance. The Applicant's representative can be reached at the below telephone number if the Examiner has any questions.

Respectfully submitted,

David T. Horoschak et al.

\_\_\_\_\_/Benjamin D. Driscoll/\_\_\_\_\_  
Benjamin D. Driscoll  
Reg. No. 41,571  
Motorola, Inc.  
101 Tournament Drive  
Horsham, PA 19044  
P (215) 323-1840  
F (215) 323-1300

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